3-3-2017

Carver v. State Respondent's Brief Dckt. 44164

IN THE SUPREME COURT OF THE STATE OF IDAHO

TODD WILLIAM CARVER,	)	
	)	**No. 44164**
Petitioner-Appellant,	)	
	)	**Idaho County Case No.**
v.	)	**CV-2014-43148**
	)	
STATE OF IDAHO,	)	
	)	
Defendant-Respondent.	)	
	)	

BRIEF OF RESPONDENT

APPEAL FROM THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF IDAHO

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STATEMENT OF THE CASE

Nature Of The Case

Todd William Carver appeals from the judgment entered following the district court's order summarily dismissing his post-conviction petition.

Statement Of Facts And Course Of The Proceedings

A jury convicted Carver of "murdering a three-year-old boy who was the son of [his] live-in girlfriend." State v. Carver, 155 Idaho 489, 490, 314 P.3d 171, 172 (2013). The court imposed a fixed life sentence. Id. Carver appealed, "challenging the failure of the district court to appoint substitute counsel, the jury instructions defining the crime, and the sentence imposed." Id. The Idaho Supreme Court affirmed Carver's conviction and sentence. Id.[1]

Carver filed a timely *pro se* petition for post-conviction relief, and a motion for appointment of counsel. (R., pp.6-31.) The court granted Carver's motion for counsel, and the state filed an Answer, after which Carver filed a motion to amend his petition. (R., pp.34-38, 57-58.) A first amended petition was filed after the court held a hearing on Carver's motion to amend. (R., p.3 (see entries dated 4/27/2015 and 5/11/2015), pp.57-58, 270-276.) The state filed a

[1] The Idaho Supreme Court's opinion on direct appeal is also included in the post-conviction record as an exhibit to Carver's amended petition. (R., pp.144-155.) The Court also took judicial notice "of the Clerk's Record and Reporter's Transcripts previously filed with th[e] Court in related appeal No. 39467, *State v. Carver* (Idaho County No. CR-2011-48214)." (R., p.438.)

motion for summary dismissal on July 2, 2015 (R., pp.279-280), the court issued a notice of intent to dismiss on July 29, 2015 (R., pp.281-285), and Carver filed a response to that notice on September 1, 2015, asking to "permit amendment of the petition based on new evidence, as opposed to summary dismissal" (R., pp.294-295). The court held a hearing on September 28, 2015, at which it authorized Carver to file a second amended petition; Carver filed that petition on October 13, 2015. (R., pp.250-256, 296-372.) In his second amended petition, Carver alleged: (1) ineffective assistance of counsel for failing to "use a peremptory challenge" to excuse Juror V.L. "who knew Lee Willis (a witness for the prosecution at trial) and the victim's mother, Angela Johnson, and [who] had discussed the case and the defendant with Lee Willis"; (2) ineffective assistance of counsel for failing to challenge Juror V.L. for cause; (3) court error for "fail[ing] to strike [Juror V.L.]"; and (4) deprivation of the "right to trial by an impartial jury." (R., pp.252-253.) In support of his second amended petition, Carver submitted excerpts from the voir dire of Juror V.L., an affidavit from Arnold Pineda, and excerpts of the trial transcript. (R., pp.313-372.) In his affidavit, Pineda averred he was summoned as a prospective juror in Carver's criminal case, but was replaced because he was late. (R., p.314.) Pineda further averred that "[t]hey brought some jurors into another room one at a time, including [Juror V.L.]," and he "recall[ed]" that "they were still interviewing other jurors," and he "was waiting with other potential jurors" when he "heard [Juror V.L.] talking to another woman" and "[a]s best" as Pineda could "remember, [Juror V.L.] said she was surprised that they kept her on the jury because she knew the relatives of the child and

had discussed the facts of the case with those persons." (R., p.315.) Finally, Pineda alleged: "I think, but am not certain, she referenced the grandparents. She said she thought 'he was guilty.'" (R., p.315.)

After Carver filed his second amended petition, the state filed an amended motion for summary dismissal, and a supporting memorandum. (R., pp.376-377, 380-389.) Carver filed a written objection to the state's motion, which included a request for discovery in relation to Juror V.L. (R., pp.394-412.)

The court held a hearing on the state's motion for summary dismissal of Carver's second amended petition after which it entered an order granting the state's motion to summarily dismiss Carver's petition and denying Carver's request for discovery. (R., pp.419-425.) Carver filed a timely notice of appeal from the district court's judgment. (R., pp.427-432.)

ISSUES

Carver states the issues on appeal as:

1. Did the district court err in failing to rule upon Mr. Caver's claim that his right to an impartial jury was violated?

2. Did the court err in refusing to consider Mr. Pineda's affidavit *in toto*?

3. Did Mr. Carver present a *prima facie* case that he was deprived of an impartial jury?

4. Did the court abuse its discretion by denying Mr. Carver's request for discovery?

(Appellant's brief, p.10.)

The state rephrases the issues on appeal as:

1. Has Carver failed to show the district court erred in summarily dismissing his post-conviction petition?

2. Has Carver failed to show error in the denial of his request to conduct discovery in the form of contacting a juror to determine whether she was biased?

ARGUMENT

I.
Carver Has Failed To Meet His Burden Of Showing Error In The Summary Dismissal Of Any Claim Raised In His Post-Conviction Petition

A. Introduction

Carver contends the district court erred in "failing to rule on [his] claim that he was deprived of his right to an impartial jury," and "refusing to consider Mr. Pineda's affidavit." (Appellant's brief, pp.10-11.) Carver further contends he alleged a genuine issue of material fact on "whether [Juror V.L.] had a pre-existing opinion as to [his] guilt, and then lied about it to the court and parties during voir dire." (Appellant's brief, p.14.) All of Carver's arguments fail. The record reflects that the district court rejected Carver's impartial jury claim, and to the extent Carver complains about a lack of express findings in relation to that claim, this Court should decline to consider this complaint because Carver failed to raise it in the district court. The record, and the applicable law, also support the district court's conclusion that the contents of Pineda's affidavit was inadmissible hearsay, and the conclusion that Carver was not entitled to an evidentiary hearing on his impartial jury claim. Carver has failed to show any error in the summary dismissal of his petition.

B. Standard Of Review

"On review of a dismissal of a post-conviction relief application without an evidentiary hearing, this Court will determine whether a genuine issue of material fact exists based on the pleadings, depositions and admissions together with any

affidavits on file." Workman v. State, 144 Idaho 518, 523, 164 P.3d 798, 803 (2007) (citing Gilpin-Grubb v. State, 138 Idaho 76, 80, 57 P.3d 787, 791 (2002)).

C. Carver Has Failed To Show Any Basis For Reversing The District Court's Judgment Dismissing His Post-Conviction Petition

The district court properly dismissed Carver's second amended petition without an evidentiary hearing because Carver failed to provide admissible evidence demonstrating a genuine issue of material fact in relation to any of his claims.

Idaho Code § 19-4906 authorizes summary dismissal of an application for post-conviction relief in response to a party's motion or on the court's own initiative. To withstand summary dismissal, a post-conviction petitioner must present "admissible evidence supporting [his] allegations." State v. Yakovac, 145 Idaho 437, 444, 180 P.3d 476, 483 (2008). Thus, a claim for post-conviction relief is subject to summary dismissal pursuant to I.C. § 19-4906 "if the applicant's evidence raises no genuine issue of material fact" as to each element of petitioner's claims. Workman, 144 Idaho at 522, 164 P.3d at 802 (citing I.C. § 19-4906(b), (c)).

Carver's second amended petition raised four claims centered around the alleged impartiality of Juror V.L. (R., pp.252-253.) These claims were based on the voir dire examination of Juror V.L., the failure to excuse her for cause, and an affidavit from Pineda, a prospective juror who claimed he heard Juror V.L. state that "she thought 'he was guilty.'" (R., pp.252-253, 313-333.) The state filed a motion to summarily dismiss Carver's petition asserting Carver failed to

present admissible evidence alleging a genuine issue of material fact in relation to any of his claims. (R., pp.376-389.) The district court granted the state's motion, concluding: (1) Carver failed to show "that trial counsel's lack of questioning of [Juror V.L.] during voir dire fell below an objective standard of reasonableness or that he did not question [Juror V.L.] because of inadequate preparation, ignorance of the law, or other shortcomings capable of objective evaluation"; and (2) Carver failed to show the court erred in failing to dismiss Juror V.L. for cause. (R., pp.423-424.) With respect to Pineda's affidavit, the court concluded it was "inadmissible hearsay," and "will not be considered." (R., p.423.) These conclusions were correct.

First, to the extent any of Carver's claims were based on Pineda's affidavit, the affidavit could only be considered to the extent it contained admissible evidence. See Yakovac, 145 Idaho at 447, 180 P.3d at 486 (dismissing claims because "Yakovac did not respond to the notice with admissible evidence"). The only information in the affidavit that was admissible was Pineda's statements regarding his presence at the jury selection stage of Carver's criminal trial. See I.R.E. 602 (testimony must be based on personal knowledge). Pineda's allegations regarding what he heard Juror V.L. say are hearsay. Hearsay is defined as "a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted." I.R.E. 801(c). Absent an exception, hearsay is not admissible. I.R.E. 802.

Carver unquestionably proffered Pineda's statement about what he claimed Juror V.L. said for the truth of the matter asserted, *i.e.*, that Juror V.L. was surprised she was left on the jury, and thought Carver was guilty. Indeed, the allegation that Juror V.L. thought Carver was guilty was a necessary prerequisite to Carver's claim that he was deprived of his right to an impartial jury. (R., p.253.) Because the statement Pineda attributed to Juror V.L. was hearsay, it did not constitute admissible evidence for purposes of alleging a genuine issue of material fact. Thus, the only proper evidence Carver offered in support of his second amended petition was the transcript excerpts, which included the voir dire of Juror V.L. These excerpts were insufficient to show a genuine issue of material fact on any of Carver's claims because those transcripts reveal that Juror V.L. advised the court that she knew some of the witnesses who would likely testify at trial and had received information from those witnesses about the case, but could be impartial despite those relationships and that knowledge. (R., pp.323-332.) The following voir dire exchange reveals Juror V.L.'s assurances in this regard:

> [PROSECUTOR]: Now, I guess the key question is you've gotten that information, can you set that aside and judge this case on its facts as presented in the courtroom?
>
> [JUROR V.L.]: You know, I've thought about that. I thought I may have trouble with that, but then after the Judge said about remember everything you hear it's secondhand or thirdhand or fourth hand information, and so I kind of realized that, yes, this is totally second and third hand information so the answer is, yes, I can put it aside.
>
> [PROSECUTOR]: You feel like you can?
>
> [JUROR V.L.]: Yes.

[PROSECUTOR]: What I mean is that there's going to be people testifying.

[JUROR V.L.]: Yeah.

[PROSECUTOR]: There's going to be evidence, photographs introduced, other pieces of evidence, and so what I understand you saying is you can listen to all of that and watch all of that and judge the case just on the evidence?

[JUROR V.L.]: I believe I can, yes.

[PROSECUTOR]: And you can block out these things that they've --

[JUROR V.L.]: I think so. I think so. I have heard all this, but I think if it's not brought up in court I'm not even going to listen to it.

[PROSECUTOR]: Now, do you do anything socially with them?

[JUROR V.L.]: No.

. . .

[PROSECUTOR]: Is it strictly just a business relationship?

[JUROR V.L.]: Strictly business.

[PROSECUTOR]: Now, is that business relationship going to make it difficult for you?

[JUROR V.L.]: No, no, absolutely not.

[PROSECUTOR]: Would you --

[JUROR V.L.]: In fact, I have told them -- they know that I was called for jury duty and --

[PROSECUTOR]: Well, let me give you a hypothetical. Let's say the State does not prove its case beyond a reasonable doubt. Would you have any trouble finding Mr. Carver guilty -- I'm sorry, not guilty because the State didn't prove it beyond a reasonable doubt because of your relationship with the Willises?

[JUROR V.L.]: No, no.

> [PROSECUTOR]: You wouldn't have a problem seeing them later and you had voted not guilty because the State didn't prove its case you wouldn't have any trouble talking to them about that --
>
> [JUROR V.L.]: I don't think so.
>
> [PROSECUTOR]: -- or facing them after that?
>
> [JUROR V.L.]: No. No, I can handle that.

(R., pp.330-332.) Defense counsel did not ask additional questions, and Juror V.L. was ultimately empaneled on the jury. (R., pp.332-333.)

Given Juror V.L.'s assurances, the standards for excusing jurors for cause, and the deference due to both the court and trial counsel in relation to jury selection, nothing in the voir dire examination of Juror V.L. created a genuine issue of material fact that would entitle Carver to an evidentiary hearing on any of the claims in his second amended petition. State v. Abdullah, 158 Idaho 386, 524-525, 348 P.3d 1, 139-140 (2015) (counsel's failure to move to strike jurors is not deficient unless objectively unreasonable); State v. Ornelas, 156 Idaho 727, 730, 330 P.3d 1085, 1088 (Ct. App. 2014) (citations omitted) ("[A] trial court does not abuse its discretion by refusing to excuse a juror for cause where the juror's answers during voir dire initially gave rise to a challenge for cause, but the juror's later responses assured the court that the juror would be able to remain fair and impartial.").

On appeal, Carver first complains that the court "erred in failing to rule on [his] claim that he was deprived of his right to an impartial jury." (Appellant's brief, pp.10-11.) This Court should decline to consider this complaint because, to the extent Carver believes the district court should have made any specific

findings as to this claim, he could, and should, have made such a request to the district court. See I.R.C.P. 52(b) ("No party may assign as error the lack of findings unless the party raised such issue to the trial court by an appropriate motion."); cf. DeRushe v. State, 146 Idaho 599, 602, 200 P.3d 1148, 1151 (2008) (post-conviction petitioner cannot challenge lack of specificity in notice for the first time on appeal); Caldwell v. State, 159 Idaho 233, 358 P.3d 794, 802-803 (Ct. App. 2015) (citing I.R.C.P. 52(b) in conjunction with rejecting petitioner's request for "remand and a new evidentiary hearing" because district court failed to address a claim in its findings of fact and conclusions of law). Carver's failure to do so prevents consideration of this claim on appeal.[2]

Even if this Court evaluates whether the district court's order encompasses Carver's claims that he was deprived of his right to trial by an impartial jury, the record reflects that it does. The court granted the state's motion for summary dismissal, and the state's request for summary dismissal addressed the alleged impartiality of Juror V.L. (R., pp.382-384, 419-425.) The district court's findings in relation to whether the trial court erred in failing to *sua sponte* excuse Juror V.L. for cause incorporate a determination that, based on voir dire, there was no evidence that Juror V.L. was actually impartial.

[2] To the extent the district court was not more specific in addressing an independent substantive impartial jury claim, it is attributalbe to the manner in which Carver pled such a claim. Construing Carver's second amended petition as including a substantive "impartial jury" claim requires a generous reading of Carver's claims because his statements regarding the right to an impartial jury were interwoven with allegations that "effective *voir dire* and/or the exercise of a challenge, either for cause or peremptory, could have resolved any issue raised by the juror's ability to be impartial." (R., p.253.)

(R., pp.423-424.) Moreover, the district court specifically concluded Carver failed to show he was prejudiced by Juror V.L.'s presence on the jury. (R., p.425.) Given the court's findings, and its decision granting the state's request for summary dismissal, Carver's claim that the district court erred in failing to rule on his impartial jury claim, even if considered, fails.

Carver next complains that the district court "erred by refusing to [consider] Mr. Pineda's affidavit." (Appellant's brief, p.12.) According to Carver, Pineda's allegations regarding what he heard Juror V.L. say were admissible under I.R.E. 803(3), 803(1), and 801(c), and "because it tends to show that the statements made during voir dire were false." (Appellant's brief, pp.12-13.) None of these arguments are preserved.

In its summary dismissal request, the state asserted that Juror V.L.'s alleged statements to Pineda were inadmissible hearsay. (R., p.387.) In response, Carver argued, "On a motion for summary dismissal, the law allows the submission of affidavits." (R., p.404 (citing I.C. § 19-4906(c)).) Carver further argued that "Pineda's ability to remember exactly which relatives were referenced by the juror in question goes to the weight, not the admissibility of this evidence." (R., p.404.) Carver did not argue, either in his written response to the state's motion, or at the hearing on the state's motion, that Juror V.L.'s alleged statements to Pineda were admissible pursuant to any exception to the hearsay rule. (See generally R., pp.404-405; Tr., pp.26-30.) Rather, he only argued that Pineda's affidavit was admissible because I.C. § 19-4906(c) allows for the submission of affidavits. (R., p.404.) While this is true, the statute does

not provide that such affidavits may include hearsay beyond the fact that the affidavits themselves are hearsay. The case law is clear that allegations must be supported by admissible evidence. Yakovac, 145 Idaho at 444, 180 P.3d at 483 ("[S]ummary dismissal may be appropriate even where the State does not controvert the applicant's evidence because the court is not required to accept either the applicant's mere conclusory allegations, unsupported by admissible evidence, or the applicant's conclusions of law."). More importantly, Carver cannot claim admissibility based on hearsay exceptions he never argued below. See State v. Sheahan, 139 Idaho 267, 277, 77 P.3d 956, 966 (2003) (citations omitted) ("For an objection to be preserved for appellate review, either the specific ground for the objection must be clearly stated, or the basis of the objection must be apparent from the context."). This Court should, therefore, decline to consider Carver's arguments, made for the first time on appeal, that the hearsay in Pineda's affidavit was admissible.

Although Carver's proffered hearsay exceptions lack merit, this Court need not address the applicability of any such exceptions because, even if Pineda's allegations are considered, they do not raise a genuine issue of material fact that Juror V.L. was actually impartial in serving as a juror in Carver's case. Carver's impartial juror claim was that he was "deprived of his right to trial by an impartial jury" because "[t]he Due Process Clause protects a defendant from jurors who are actually incapable of rendering an impartial verdict based on the evidence and the law." (R., p.253.) Carver did not present evidence sufficient to show that Juror V.L. was "actually incapable of rendering an

impartial verdict based on the evidence and the law." In fact, the voir dire examination of Juror V.L. reveals the contrary. Pineda's allegation that Juror V.L. said, at some unidentified point during the voir dire process, that "she thought 'he was guilty,'" assuming the "he" meant Carver, does not show that her assurances were false, as Carver claims. Indeed, there is no evidence that Pineda heard that statement **after** Juror V.L.'s voir dire such that one could conclude, or even infer, that she "lied" to the court. Further, a juror is not impartial simply because she has a preconceived notion regarding guilt. State v. Ellington, 151 Idaho 53, 69, 253 P.3d 727, 743 (2011) (a trial court "does not need to find jurors that are entirely ignorant of the facts and issues involved in the case," because "the mere existence of any preconceived notion as to the guilt or innocence of an accused, without more, is [in]sufficient to rebut the presumption of impartiality"). For these reasons, Carver's assertion that he raised a genuine issue of material fact entitling him to an evidentiary hearing also fails. (Appellant's brief, pp.13-15.)

Carver has failed to show any error in the summary dismissal of his second amended petition for post-conviction relief.

II.
Carver Has Failed To Show Error In The Denial Of His Discovery Request

A. Introduction

Carver did not file a separate motion for discovery, but did request discovery in his response to the state's motion for summary dismissal. (R., pp.410-411.) Specifically, Carver requested discovery in relation to Juror V.L. in

the form of "depositions under strict conditions as to scope and subject matter." (R., p.411.) The district court denied the request, concluding that questions as to Juror V.L.'s alleged impartiality were prohibited by I.R.E. 606(b). (R., pp.424-425.) Carver claims the court erred in denying his discovery request, contending that "the requested discovery was necessary because it could show that [Juror V.L.] was untruthful during voir dire and did in fact have a pre-existing belief that [he] was guilty which she could not put aside," which would "disqualify her from jury duty." (Appellant's brief, p.16.) A review of the record and the applicable legal standards shows no error in the court's denial of discovery.

B. Standard Of Review

Whether to authorize discovery is a matter directed to the discretion of the trial court. Murphy v. State, 143 Idaho 139, 148, 139 P.3d 741, 750 (Ct. App. 2006) (citing I.C.R. 57(b); Aeschliman v. State, 132 Idaho 397, 402, 973 P.2d 749, 754 (Ct. App. 1999); Fairchild v. State, 128 Idaho 311, 319, 912 P.2d 679, 687 (Ct. App. 1996)).

C. Carver Has Failed To Show Error In The Denial Of His Discovery Request

"The district court is not required to order discovery 'unless necessary to protect an applicant's substantial rights.'" Murphy, 143 Idaho at 148, 139 P.3d at 750 (quoting Griffith v. State, 121 Idaho 371, 375, 825 P.2d 94, 98 (Ct. App. 1992)). In his response to the state's motion for summary dismissal, Carver requested "discovery within the bounds of Rule 606(b)." (R., p.410.) In particular, it appears Carver wanted to depose Juror V.L. to determine whether

she was biased. (R., p.411 ("The Court may also authorize depositions under strict conditions as to scope and subject matter.").) The district court denied Carver's request, stating:

> Post-trial discovery of jurors is limited by Idaho Rule of Evidence 606(b). A juror cannot testify as to any matter occurring during deliberations or the effect of anything upon his mind or emotions influencing him to assert or dissent from the verdict or anything about the mental process used. I.R.E. 606(b). This rule protects public policy interests in preserving a full and fair trial, protecting juror privacy and protecting the finality of verdicts. [*State v.*] *Hall*, 151 Idaho [42], 48, 253 P.3d [716], 722 [(2010)].
>
> The ultimate question here is whether [Juror V.L.'s] alleged impartiality affected the jury verdict. I.R.E. 606(b) prevents Carver from asking her, or any other juror, if she did act with impartiality. As stated in *Hall*:
>
> > As juror statements are the only way to ascertain what took place in the deliberative process or in the minds of the jury, the effect of this rule is to make lines of inquiry pertaining to these areas inherently fruitless. Where such questioning could never lead to admissible evidence there is necessarily no showing of good cause to interview the jurors on these topics.
>
> *Id.,* 151 Idaho at 51, 253 P.3d at 725.
>
> At most, discovery could establish whether [Juror V.L.] told another jury pool member that she thought Carver was guilty. Even if she had said that, the court was entitled to rely on her assurances that she could be impartial.

(R., pp.424-425 (some formatting altered).)

The denial of discovery was not error because Carver would not be entitled to ask Juror V.L. whether she was impartial, as she said she would be, when she participated in the deliberative process. As such, discovery was not necessary to protect Carver's substantial rights.

Nevertheless, Carver claims on appeal that "the requested discovery was necessary because it could show that [Juror V.L.] was untruthful during voir dire and did in fact have a pre-existing belief that [he] was guilty which she could not put aside." (Appellant's brief, p.16.) Carver further argues that the district court erred in concluding I.R.E. 606(b) precluded his discovery request because, he claims, the rule does not apply to asking "whether a juror answered voir dire questions honestly." (Appellant's brief, p.16.) Carver's argument fails because it ignores the scope of I.R.E. 606(b).

Rule 606(b) provides:

> Upon an inquiry into the validity of a verdict or indictment, **a juror may not testify as to** any matter or statement occurring during the course of the jury's deliberations or to **the effect of anything upon the juror's** or any other juror's **mind or emotions as influencing the juror to assent to or dissent from the verdict or indictment or concerning the juror's mental processes in connection therewith**, nor may a juror's affidavit or evidence of any statement by the juror concerning a matter about which the juror would be precluded from testifying be received for these purposes, but a juror may testify on the questions whether extraneous prejudicial information was improperly brought to the jury's attention or whether any outside influence was improperly brought to bear upon any juror and may be questioned about or may execute an affidavit on the issue of whether or not the jury determined any issue by resort to chance.

(Emphasis added).

The plain language of the rule prohibits inquiry into the precise area Carver seeks to "discover," *i.e.*, whether Juror V.L. was impartial in her deliberations. See Hall, 151 Idaho at 51, 253 P.3d at 725 (while I.R.E. 606(b) does not "restrict[] the permissible scope of post-conviction juror interviews to those topics on which jurors themselves might testify," "lines of inquiry related to

the jurors' deliberations, mental processes, minds or emotions [are] improper"). Carver cannot avoid the requirements of the rule, and related limitations on discovery, by characterizing his proposed inquiry in terms of whether Juror V.L. lied because the obvious purpose of that question is to use such testimony as evidence that Juror V.L.'s verdict was influenced by her mental processes and alleged bias, an area of questioning that is "inherently fruitless." Hall, 151 Idaho at 51, 253 P.3d at 725. The district court properly concluded that Carver was not entitled to depose Juror V.L. to discover that which I.R.E. 606(b) prohibits because "such questioning could never lead to admissible evidence." Id. Consequently, Carver failed to show good cause to depose Juror V.L. Carver has failed to meet his burden of showing otherwise.

CONCLUSION

The state respectfully requests that this Court affirm the district court's order summarily dismissing Carver's petition for post-conviction relief.

DATED this 3rd day of March, 2017.

/s/ Lori A. Fleming
for JESSICA M. LORELLO
Deputy Attorney General

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 3rd day of March, 2017, served a true and correct copy of the foregoing BRIEF OF RESPONDENT by emailing an electronic copy to:

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at the following email addresses: db@nbmlaw.com and lm@nbmlaw.com.

/s/ Lori A. Fleming
for JESSICA M. LORELLO
Deputy Attorney General

JML/dd